



Sen. Thomas Cullerton

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1 AMENDMENT TO HOUSE BILL 3358

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3358 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the Data  
5 Transparency and Privacy Act.

6 Section 5. Findings. The General Assembly finds and  
7 declares that:

8 (1) The right to privacy is a personal and fundamental  
9 right protected by the United States Constitution. As such, all  
10 individuals have a right to privacy and a personal property  
11 interest in information pertaining to them and that information  
12 shall be adequately protected from unlawful invasions and  
13 takings. This State recognizes the importance of providing  
14 consumers with transparency about how their personal  
15 information, especially information relating to their  
16 children, is shared by businesses. This transparency is crucial

1 for Illinois citizens to protect themselves and their families  
2 from cyber-crimes and identity thieves.

3 (2) Furthermore, for free market forces to have a role in  
4 shaping the privacy practices and for "opt-in" and "opt-out"  
5 remedies to be effective, consumers must be more than vaguely  
6 informed that a business might share personal information with  
7 third parties. Consumers must be better informed about what  
8 kinds of personal information is shared with other businesses.  
9 With these specifics, consumers can knowledgeably choose to opt  
10 in, opt out, or choose among businesses that disclose  
11 information to third parties on the basis of how protective the  
12 business is of consumers' privacy.

13 (3) Businesses are now collecting personal information and  
14 sharing and selling it in ways not contemplated or properly  
15 covered by the current law. Some websites are installing  
16 tracking tools that record when consumers visit web pages, and  
17 sending very personal information, such as age, gender, race,  
18 income, health concerns, religion, and recent purchases to  
19 third-party marketers and data brokers. Third-party data  
20 broker companies are buying, selling, and trading personal  
21 information obtained from mobile phones, financial  
22 institutions, social media sites, and other online and brick  
23 and mortar companies. Some mobile applications are sharing  
24 personal information, such as location information, unique  
25 phone identification numbers, and age, gender, and other  
26 personal details with third-party companies.

1           (4) As such, consumers need to know the ways that their  
2 personal information is being collected by companies and then  
3 shared or sold to third parties in order to properly protect  
4 their privacy, property, personal safety, and financial  
5 security.

6           Section 10. Definitions. As used in this Act:

7           "Affiliate" means a legal entity that controls, is  
8 controlled by, or is under common control with another legal  
9 entity.

10          "Consumer" means a natural person residing in this State.  
11 "Consumer" does not include a natural person acting in an  
12 employment context.

13          "Deidentified" means information that cannot reasonably be  
14 used to infer information about, or otherwise be linked to, a  
15 particular consumer. An operator that uses deidentified  
16 information:

17               (1) must take reasonable measures to ensure that the  
18 data is deidentified; and

19               (2) must publicly commit to maintain and use the data  
20 in a deidentified fashion and not to attempt to reidentify  
21 the data.

22          If a company makes such deidentified data available to  
23 service providers or other third parties, then it must  
24 contractually prohibit such entities from attempting to  
25 reidentify the data.

1 "Designated request address" means an electronic mail  
2 address, online form, or toll-free telephone number that a  
3 consumer may use to request the information required to be  
4 provided pursuant to this Act.

5 "Disclose" means to disclose, release, transfer, share,  
6 disseminate, make available, sell, or otherwise communicate  
7 orally, in writing, or by electronic or any other means a  
8 consumer's personal information to any affiliate or third  
9 party.

10 "Disclose" does not include:

11 (1) Disclosure of personal information by an operator  
12 to a third party or service provider under a written  
13 contract authorizing the third party or service provider to  
14 utilize the personal information to perform services on  
15 behalf of the operator, including, but not limited to,  
16 maintaining or servicing accounts, disclosure of personal  
17 information by an operator to a service provider,  
18 processing or fulfilling orders and transactions,  
19 verifying consumer information, processing payments,  
20 providing financing, or similar services, but only if: the  
21 contract prohibits the third party or service provider from  
22 using the personal information for any reason other than  
23 performing the specified service on behalf of the operator  
24 and from disclosing any such personal information to  
25 additional third parties or service providers unless those  
26 additional third parties or service providers (i) are

1 allowed by the contract to further the specified services  
2 and (ii) the additional third parties are subject to the  
3 same restrictions imposed by this subsection.

4 (2) Disclosure of personal information by an operator  
5 to a third party based on a good faith belief that  
6 disclosure is required to comply with applicable law,  
7 regulation, legal process, or court order.

8 (3) Disclosure of personal information by an operator  
9 to a third party that is reasonably necessary to address  
10 fraud, risk management, security, or technical issues; to  
11 protect the disclosing operator's rights or property; or to  
12 protect consumers or the public from illegal activities.

13 (4) Disclosure of personal information by an operator  
14 to a third party in connection with the proposed or actual  
15 sale, merger, or bankruptcy of the operator, to a third  
16 party.

17 "Operator" means any private entity that owns an Internet  
18 website or an online service that collects, maintains, or  
19 discloses personal information of a consumer residing in this  
20 State who uses or visits the website or online service if the  
21 website or online service is operated for commercial purposes.  
22 It does not include any third party that operates, hosts, or  
23 manages, but does not own, a website or online service on the  
24 owner's behalf or by processing information on behalf of the  
25 owner.

26 "Personal information" means any information that can

1 reasonably be used to infer information about, or otherwise be  
2 linked to, a particular consumer, including, but not limited  
3 to, identifiers such as a real name, alias, signature, address,  
4 telephone number, passport number, driver's license or State  
5 identification card number, insurance policy number, bank  
6 account number, credit card number, debit card number, or any  
7 other financial account information, unique personal  
8 identifier, geolocation, or biometric information. Personal  
9 information does not include data that has been deidentified.

10 "Private entity" means a sole proprietorship, partnership,  
11 limited liability company, corporation, association, or other  
12 legal entity that is organized or operated for the profit or  
13 financial benefit of its shareholders or other owners, that  
14 does business in the State of Illinois, and that satisfies one  
15 or more of the following thresholds:

16 (1) Annually buys, receives for the business'  
17 commercial purposes, sells, or shares for commercial  
18 purposes, alone or in combination, the personal  
19 information of 50,000 or more consumers, households, or  
20 devices.

21 (2) Derives 50% or more of its annual revenues from  
22 selling consumers' personal information.

23 "Process" or "processes" means any collection, use,  
24 storage, disclosure, analysis, deletion, or modification of  
25 personal information.

26 "Sale" or "sell" means the selling, renting, or licensing

1 of a consumer's personal information by an operator to a third  
2 party in direct exchange for monetary consideration, whereby,  
3 as a result of such transaction, the third party may use the  
4 personal information for its own commercial purposes.

5 "Sale" or "sell" does not include circumstances in which:

6 (1) A consumer uses or directs the operator to  
7 intentionally disclose personal information or uses the  
8 operator to intentionally interact with a third party,  
9 provided the third party does not also sell the personal  
10 information, unless that disclosure would be consistent  
11 with the provisions of this Act. An intentional interaction  
12 occurs when the consumer intends to interact with the third  
13 party by one or more deliberate interactions. Hovering  
14 over, muting, pausing, or closing a given piece of content  
15 does not constitute a consumer's intent to interact with a  
16 third party.

17 (2) The operator uses or shares an identifier for a  
18 consumer who has opted out of the sale of the consumer's  
19 personal information for the purposes of alerting third  
20 parties that the consumer has opted out of the sale of the  
21 consumer's personal information.

22 (3) The operator uses or shares with a service provider  
23 personal information of a consumer that is necessary to  
24 perform a business purpose or business purposes if the  
25 service provider does not further collect, sell, or use the  
26 personal information of the consumer except as necessary to

1 perform the business purpose or business purposes.

2 (4) The operator transfers to a third party the  
3 personal information of a consumer as an asset that is part  
4 of a merger, acquisition, bankruptcy, or other transaction  
5 in which the third party assumes control of all or part of  
6 the business provided that information is used or shared  
7 consistently with this Act. If a third party materially  
8 alters how it uses or shares the personal information of a  
9 consumer in a manner that is materially inconsistent with  
10 the promises made at the time of collection, it shall  
11 provide prior notice of the new or changed practice to the  
12 consumer. The notice shall be sufficiently prominent and  
13 robust to ensure that existing consumers can easily  
14 exercise their choices consistently with Section 25. This  
15 subparagraph does not authorize a business to make  
16 material, retroactive privacy policy changes or make other  
17 changes in their privacy policy in a manner that would  
18 violate the Consumer Fraud and Deceptive Business  
19 Practices Act.

20 (5) An operator uses a consumer's personal information  
21 to sell targeted advertising space to a third party as long  
22 as the personal information is not sold by the operator to  
23 the third party.

24 (6) The disclosure or transfer of personal information  
25 to an affiliate of the operator.

26 "Service provider" means the natural or legal person that

1 processes personal information on behalf of the operator.

2 "Third party" means a private entity that is: (1) not an  
3 affiliate of the private entity that has disclosed personal  
4 information; or (2) a private entity that is an affiliate with  
5 the private entity that has disclosed personal information and  
6 the affiliate relationship is not clear to the consumer.

7 "Verified request" means the process through which a  
8 consumer may submit a request to exercise a right or rights set  
9 forth in this Act and by which an operator can reasonably  
10 authenticate the request. A consumer shall not be required to  
11 create an account with the operator in order to make a verified  
12 request, and the method for exercising the rights set forth in  
13 this Act shall be reasonably accessible and not be overly  
14 burdensome on the consumer.

15 Section 15. Right to transparency. An operator that  
16 collects personal information or deidentified information  
17 through the Internet about individual consumers who use or  
18 visit its Internet website or online service, in its consumer  
19 service agreement or incorporated addendum or any other similar  
20 and readily available mechanism accessible to the consumer,  
21 shall:

22 (1) identify all categories of personal information  
23 and deidentified information that the operator processes  
24 about individual consumers collected through its Internet  
25 website or online service;

1           (2) identify all categories of third parties with whom  
2 the operator may disclose that personal information or  
3 deidentified information;

4           (3) disclose whether a third party may collect personal  
5 information or deidentified information about an  
6 individual consumer's online activities over time and  
7 across different Internet websites or online services when  
8 the consumer uses the Internet website or online service of  
9 the operator;

10          (4) provide a description of the process, if any such  
11 process exists, for an individual consumer who uses or  
12 visits the Internet website or online service to review and  
13 request changes to inaccurate personal information that is  
14 collected by the operator as a result of the consumer's use  
15 or visits to the Internet website or online service;

16          (5) describe the process by which the operator notifies  
17 consumers who use or visit its Internet website or online  
18 service of material changes to the notice required to be  
19 made available under this Section;

20          (6) state the effective date of the notice;

21          (7) provide a description of a consumer's rights, as  
22 required by this Act, accompanied by one or more designated  
23 request addresses.

24 Section 20. Right to know.

25 (a) An operator that discloses personal information of a

1 consumer collected through the consumer's use of or visit to  
2 the operator's website or online service to a third party shall  
3 make the following information available to a consumer, free of  
4 charge, upon receipt of a verified request:

5 (1) the categories of personal information that were  
6 disclosed about an individual consumer and the approximate  
7 number of all third parties that received the consumer's  
8 personal information; or

9 (2) all categories of personal information about  
10 consumers that were disclosed and the approximate number of  
11 all third parties that received any consumer's personal  
12 information.

13 (b) An operator may establish processes for reasonably  
14 authenticating consumers making the request if the operator  
15 seeks to provide the consumer with information about the  
16 individual consumer pursuant to item(1) of subsection (a).

17 (c) Notwithstanding the other provisions of this Section, a  
18 parent or legal guardian of a consumer under the age of 13 may  
19 submit a verified request under this Section on behalf of that  
20 consumer.

21 (d) This Section applies only to personal information  
22 disclosed after the effective date of this Act.

23 Section 25. Right to opt out. An operator that sells the  
24 personal information of a consumer collected through the  
25 consumer's use of or visit to the operator's Internet website

1 or online service shall clearly and conspicuously post, on its  
2 Internet website or online service or in another prominently  
3 and easily accessible location the operator maintains for  
4 consumer privacy settings, a link to an Internet web page  
5 maintained by the operator that enables a consumer, by verified  
6 request through a designated request address, to opt out of  
7 such sale of the consumer's personal information to third  
8 parties. The method by which a consumer may opt out shall be  
9 done in a form and manner determined by the operator in a way  
10 and fashion that is not overly burdensome, shall not require a  
11 consumer to establish an account with the operator in order to  
12 opt out of the sale of a consumer's personal information, and  
13 shall be posted in a conspicuous place that is readily and  
14 easily accessible to a consumer. This Section applies only to  
15 operators that sell personal information. This Section only  
16 applies to personal information sold after the effective date  
17 of this Act.

18 Section 30. Response to verified requests.

19 (a) An operator that receives a verified request from a  
20 consumer through a designated request address under this Act  
21 shall provide a response to the consumer within 45 days of the  
22 request.

23 (b) An operator shall not be required to respond to a  
24 request made by the same consumer or made by the same parent or  
25 legal guardian on behalf of a consumer under the age of 13 more

1 than once in any 12-month period.

2 Section 35. Enforcement. A violation of this Act  
3 constitutes an unlawful practice under the Consumer Fraud and  
4 Deceptive Business Practices Act. The Attorney General has  
5 exclusive authority to enforce this Act as a violation of the  
6 Consumer Fraud and Deceptive Business Practices Act, subject to  
7 the remedies available to the Attorney General pursuant to the  
8 Consumer Fraud and Deceptive Business Practices Act. There  
9 shall be no private right of action to enforce violations under  
10 this Act.

11 Section 40. Waivers; contracts. Any waiver of the  
12 provisions of this Act is void and unenforceable. If a party  
13 violates any provision of this Act, the non-violating party's  
14 obligations under any agreement between the parties are  
15 terminated.

16 Section 45. Construction.

17 (a) The obligations imposed on operators by this Act shall  
18 not restrict an operator's ability to:

19 (1) Comply with federal, state, or local laws, rules,  
20 regulations, or enforceable guidance.

21 (2) Comply with a civil, criminal, or regulatory  
22 inquiry, investigation, subpoena, or summons by federal,  
23 state, or local authorities.

1           (3) Cooperate with law enforcement agencies concerning  
2           conduct or activity that the operator, service provider, or  
3           third party reasonably and in good faith believes may  
4           violate federal, state, or local law.

5           (4) Exercise or defend legal claims.

6           (5) Prevent, detect, or respond to identity theft,  
7           fraud, or other malicious or illegal activity.

8           (b) Nothing in this Act applies to a health care provider  
9           or other covered entity subject to the Federal Health Insurance  
10          Portability and Accountability Act of 1996 and the rules  
11          promulgated under that Act.

12          (c) Nothing in this Act applies in any manner to a  
13          financial institution or an affiliate of a financial  
14          institution that is subject to Title V of the Federal  
15          Gramm-Leach-Bliley Act and the rules promulgated under that  
16          Act.

17          (d) Nothing in this Act applies to a contractor,  
18          subcontractor, or agent of a State agency or local unit of  
19          government when working for that State agency or local unit of  
20          government.

21          (e) Nothing in this Act applies to a public utility, an  
22          alternative retail electric supplier, or an alternative gas  
23          supplier, as those terms are defined in Sections 3-105, 16-102,  
24          and 19-105 of the Public Utilities Act, or an electric  
25          cooperative, as defined in Section 3.4 of the Electric Supplier  
26          Act.

1           (f) Nothing in this Act applies to: (i) a hospital operated  
2 under the Hospital Licensing Act; (ii) a hospital affiliate, as  
3 defined under the Hospital Licensing Act; or (iii) a hospital  
4 operated under the University of Illinois Hospital Act.

5           (g) Nothing in this Act applies to personal information  
6 collected, processed, or disclosed by a retailer in connection  
7 with a prospective or complete sale, transaction, or  
8 communication conducted on, before, or after the effective date  
9 of this Act that is related to business services or delivering  
10 information, or selling, offering to sell, moving, or  
11 delivering tangible personal property. As used in this Section,  
12 "retailer" means an entity that holds itself out as being  
13 engaged, or habitually engages, in selling, moving, or  
14 delivering tangible personal property at retail and includes a  
15 retailer's affiliates, subsidiaries, and service providers  
16 collecting, processing, or disclosing personal information on  
17 behalf of the retailer to facilitate a prospective or complete  
18 sale, transaction, or communication related to business  
19 services or delivering information, or selling, offering to  
20 sell, moving, or delivering tangible personal property.

21           (h) Nothing in this Act applies to the following entities  
22 and affiliates, as defined in 17 CFR 230.405, of any such  
23 entities: telecommunications carriers as defined in Section  
24 13-202 of the Public Utilities Act and wireless carriers as  
25 defined in Section 2 of the Emergency Telephone System Act.

26           (i) Nothing in this Act restricts an operator's ability to

1 collect or disclose a consumer's personal information if a  
2 consumer's conduct takes place wholly outside of Illinois. For  
3 purposes of this Act, conduct takes place wholly outside of  
4 Illinois if the operator collected that information while the  
5 consumer was outside of Illinois, no part of the sale of the  
6 consumer's personal information occurred in Illinois, and no  
7 personal information collected while the consumer was in  
8 Illinois is disclosed.

9 (j) Nothing in this Act shall require an operator to (i)  
10 retain any personal information collected for a single,  
11 one-time transaction, if such information is not sold or  
12 retained by the business or to reidentify or otherwise link  
13 information that is not maintained in a manner that would be  
14 considered personal information; or (ii) reidentify or  
15 otherwise link any data that, in the ordinary course of  
16 business, is not maintained in a manner that would be  
17 considered personal information.

18 (k) Nothing in this Act shall be construed to modify,  
19 limit, or supersede the operation of any other Illinois law or  
20 prevent a party from otherwise seeking relief under the Code of  
21 Civil Procedure.

22 Section 50. Severability. If any provision of this Act or  
23 its application to any person or circumstance is held invalid,  
24 the invalidity of that provision or application does not affect  
25 other provisions or applications of this Act that can be given

1 effect without the invalid provision or application.

2 Section 99. Effective date. This Act takes effect July 1,  
3 2020.".